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6 Attorneys for Plaintiff

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 COLETTE MCNALLY, an individual,

10
11 Plaintiff/Appellant,

12 -vs-

13 SUN LAKES HOMEOWNERS

14 ASSOCIATION #1, INC., an Arizona non-
15 profit corporation,

16 Defendant/Appellees.

No. CV2014-009496

**APPELLANT'S NOTICE OF
TRANSCRIPT ORDER
PURSUANT TO ARCAP 11 (c)(3)**

(Assigned to The Hon. James T. Blomo)

17 PLEASE TAKE NOTICE that Appellant, Colette McNally ("Appellant"), by and
18 through undersigned counsel, ordered from court reporter Jeanne Kappedal on November 2,
19 2015 the following transcripts from the evidentiary hearing on her Application for
20 Preliminary Injunction that took place before the Honorable James T. Blomo on August 12,
21 2015:

- 22
- 23 1) Direct Examination, Cross-Examination and Redirect Examination of Plaintiff,
24 Colette McNally;
 - 25 2) Direct Examination and Cross-Examination of Jeannie Martens;
 - 26 3) Direct Examination and Cross-Examination of Rick Schwartz;

- 1 4) Direct Examination and Cross-Examination of Janice Cournoyer; and
- 2 5) Direct Examination and Cross-Examination of Scott B. Carpenter, Esq.

3 PLEASE TAKE FURTHER NOTICE that Appellant has already obtained the
4 transcripts of the Cross-Examination of Rick Schwartz, the Cross-Examination of Janice
5 Cournoyer and the Direct/Cross-Examination of Scott B. Carpenter, Esq. and has included
6 those transcripts in Volume 2 of the Appendix that Appellant filed with her Petition for
7 Special Action. It is Appellant’s understanding that the court reporter will be providing
8 these transcripts again in sequential order with those transcripts that were not ordered when
9 Appellant filed her Petition for Special Action.

10 PLEASE TAKE FURTHER NOTICE that pursuant to ARCAP 11(c)(3)(B) Appellant
11 intends to raise the following issues on appeal:

12 1. The Association’s homeowners removed the Board’s power to remove fellow
13 Board members because “it violates democratic process.” Where the Board admittedly
14 violates the Open Meeting Law by improperly discussing association business in executive
15 session and reaching consensus on such matters therein, can the Board screen Petitioner from
16 participating in executive sessions and ostensibly remove her as a Board member that way
17 without violating the absolute rule preventing board members from removing fellow elected
18 board members?

19 2. Does the Board of Directors have legal authority to screen Petitioner from
20 executive sessions and/or what law governs the Board’s authority to take such action if the
21 action is even authorized?

22 3. A.R.S. § 10-3830(D) states that a director is presumed to have acted in good
23 faith and that the burden is on the party challenging a director’s action to rebut that
24 presumption by clear and convincing evidence. Did the Association violate A.R.S. § 10-
25 3830(D) and Petitioner’s right to due process by screening her from executive session
26 without a hearing and by shifting the burden to Petitioner to have to file suit and seek an

1 injunction to prove she did nothing wrong?

2 4. The Board has openly admitted to violating the Open Meeting Law by
3 improperly discussing matters in closed meetings that are required to be discussed openly
4 with members of the community. The Board's executive session minutes also prove these
5 violations. Should the Association be compelled to comply with the Open Meeting Law?

6
7 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

8 By: /s/ Jacob A. Kubert
9 Steven W. Cheifetz
10 Jacob A. Kubert
11 Attorneys for Appellant

12 **ORIGINAL** of the foregoing e-filed
13 with the Clerk of the Superior Court and a **COPY**
14 mailed and e-mailed this 9th day of November 2015, to:

15 Robert Grasso, Jr., Esq.
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17 Jenny J. Winkler, Esq.
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23 By: /s/ Julie B. Mills

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